



Town of Lexington

PLANNING BOARD

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RECOMMENDATION REPORT OF THE LEXINGTON PLANNING BOARD ARTICLE 9: AMEND ZONING BYLAW – DISTANCE FROM BASEMENT, SLAB OR CRAWL SPACE AND GROUNDWATER

RECOMMENDATION

The Planning Board unanimously recommends that Town Meeting APPROVE the motion under Article 9. On Wednesday, September 23, 2020, after a series of public hearings, the Planning Board voted to recommend favorable action with a vote of five (5) in favor, zero (0) in opposition, and zero (0) in abstention for Article 9: Amend the Zoning Bylaw – Distance from Basement, Slab or Crawl Space and Groundwater.

BACKGROUND

Over the years, residents within Lexington have been experiencing the impacts of development through the displacement of groundwater. Such an issue arises when a new house with a basement is installed in the water table. The displacement of groundwater often results in the flooding of the new basement and displaces water off-site, onto neighboring properties, and into the street. It should also be noted that this issue sometimes results in new illegal connections to the Town's drainage system, thereby increasing costs to the Town.

The proposed Groundwater Bylaw requires a minimum distance between the Estimated Seasonal High Groundwater Table (ESHGWT) and the finished basement floor or slab. This issue was regulated until 1998 when the Lexington Zoning Bylaw was amended, and the regulation was deleted. The flooding of basements or movement of water onto abutting properties is not unique to Lexington. Throughout the Commonwealth, many communities are working to enforce similar regulations.

PUBLIC HEARING PROCESS

Due to COVID-19, all of the zoning articles initially scheduled for the Annual Town Meeting scheduled for March of 2020 were postponed to a Fall Special Town Meeting of 2020. Due to the length of time between the Annual and Fall Special Town Meetings, the Planning Board was required to hold new public hearings. To ensure all information heard during the public hearings has been communicated, this section of this report provides a review of the public hearings held for the Annual Town Meeting 2020 and Fall Special Town Meeting 2020.

Annual Town Meeting Public Hearing Proceedings (February – March 2020)

On Wednesday, February 26, 2020, after the publication of the legal advertisement in the Boston Globe Newspaper on February 11, 2020, and February 18, 2020, and notification sent to parties of interest, the Planning Board open its public hearing for

Article 35: Distance from Basement, Slab or Crawl Space and Groundwater. A continued public hearing was held on Wednesday, March 4, 2020. At such time the Planning Board closed the public hearing and made a favorable recommendation to the Annual Town Meeting of 2020.

The Planning Board during the public hearing process provided comments, in addition to taking public comments. Much of the discussion during the Wednesday, February 26, 2020, a public hearing was associated with clarifying questions associated the proposed language relative to two (2) feet vs. two point five (2.5) feet, in addition to proposed amendments to Section 4.5, all of which were resolved before the Planning Board's vote on Wednesday, March 4, 2020.

PUBLIC HEARING MINUTES

FEBRUARY 26, 2020

Present for the public hearing: James Kelly, Lexington Building Commissioner

James Kelly presented a PowerPoint presentation entitled Article 35: Amend Zoning Bylaw – Distance from Basement, Slab or Crawl Space and Groundwater. The presentation identified the problem that Article 35 intends to address; the potential solution to the problem; a review of examples relevant to discharging of water without proper planning, pumping water into the street, sewer, and drainage system; the need for engineering review; a review of conditions and requirements that Article 35 proposes; and a review of comments received from builders.

Mr. Hornig requested comments from members of the Planning Board. The following comments were provided.

- Ginna Johnson questioned if the staff had time to review and consider her comments relevant to Section 4.5.4.
- Richard Canale requested clarification as to the reason for two (2) feet.
- Ms. Johnson proposed alternative language for Section 5.3.4 of the proposed Bylaw relative to the slab being below groundwater.

Mr. Hornig questioned if the Planning Board would like to close the public hearing. Ms. Johnson requested permission to work with Mr. Kelly to finalize the language and ask that the public hearing remain open.

MARCH 4, 2020

Present for the public hearing: James Kelly, Lexington Building Commissioner

Robert Creech, Chair, opened the continued public hearing for Article 35: Distance from Basement, Slab or Crawl Space and Groundwater and requested an update since the February 26, 2020, public hearing.

Mr. Kelly provided a review of amendments to the proposed language since February 26, 2020, public hearing.

Mr. Creech requested comments from members of the Planning Board. The following comments were provided.

- Charles Hornig questioned if the proposed language in Section 4.5.5 Relationship to Other Laws is needed since its located elsewhere in the Zoning Bylaw. Mr. Hornig requested that Section 4.5.5 be stricken from the proposed language.
- Ginna Johnson stated her appreciation for the amendments and the work efforts of staff.

On February 26 and March 4, 2020, the Planning Board opened the floor for public comments. Public comments were received on February 26, 2020. All comments can be reviewed on the video stream capture of the public hearing and the associated meeting minutes.

Fall Special Town Meeting Public Hearing Proceedings (September 2020)

On Wednesday, September 9, 2020, after the publication of the legal advertisement in the Minuteman Newspaper on August 20, 2020, and August 27, 2020, and notification sent to parties of interest. The Planning Board opened its public hearing for Article 9: Amend the Zoning Bylaw – Distance from Basement, Slab or Crawl Space and Groundwater. A continued public hearing was held on Wednesday, September 23, 2020. At such time the Planning Board closed the public hearing and made a favorable recommendation to the Annual Town Meeting of 2020.

PUBLIC HEARING MINUTES

SEPTEMBER 9, 2020

Present for the public hearing: James Kelly, Lexington Building Commissioner

James Kelly presented a PowerPoint presentation entitled Article 9: Amend Zoning Bylaw – Distance from Basement, Slab or Crawl Space and Groundwater. The presentation identified the problem that Article 9 intends to address; the potential solution to the problem; a review of examples relevant to discharging of water without proper planning, pumping water into the street, sewer, and drainage system; the need for engineering review; a review of conditions and requirements that Article 9 proposes; and a review of comments received from builders.

Bob Creech requested comments from members of the Planning Board. The following comments were provided.

- Ginna Johnson requested clarification as to how the two (2) feet depth is measured to ensure there are no questions.
- Robert Peters requested clarification as to how do the two (2) feet compare to other comparable communities doing whether bylaw. Mr. Kelly stated that other communities are using one (1) foot, and provided clarification regarding the proposed two (2) feet separation

SEPTEMBER 23, 2020

Mr. Kelly provided a brief update to the Planning Board regarding Article 9.

Mr. Creech requested clarification regarding a developer to lift a foundation out of the water, but rather for a developer not to build in the groundwater. Mr. Kelly confirmed that Mr. Creech was correct.

Mr. Creech requested comments from members of the Planning Board. Members of the Planning Board did not have comments at this time. Ginna Johnson asked confirmation regarding the effective date of the Article, which would be the first advertisement in the local newspaper.

On September 9 and 23, 2020, the Planning Board opened the floor for public comments. Public comments were received on September 9, 2020. All comments can be reviewed on the video stream capture of the public hearing and the associated meeting minutes.

ARTICLE MOTION & PROPOSED LANGUAGE

MOTION

That the Zoning Bylaw, Chapter 135 of the Code of the Town of Lexington, be amended by adding a new Section 4.5 as follows, and further that non-substantive changes to the numbering of this bylaw be permitted in order that it be in compliance with the numbering format of the Code of the Town of Lexington:

4.5.1 PURPOSE.

The purposes of this section are to preserve and protect groundwater; to maintain and enhance the public safety, environment, health, and general welfare by establishing minimum requirements; and to establish procedures to control the adverse effects of building basement floors nearer than two (2) feet from the Estimated Seasonal High Groundwater Table (ESHGWT), including basement flooding, pumping and discharge of groundwater to neighboring properties, discharging groundwater to the public way, and illicit connections to the Town's sewer and stormwater connections.

4.5.2 DEFINITIONS.

Estimated Seasonal High Groundwater Table (ESHGWT): The estimated highest level to a zone of saturation in the soil in most years under normal wet season, as determined by a registered professional engineer, a qualified soil scientist or licensed soil evaluator.

4.5.3 APPLICABILITY.

The requirement of this Section 4.5 shall apply to:

1. A new dwelling; or
2. Additions to an existing dwelling that increases a building footprint by more than 1,000 square feet.

4.5.4 CONDITIONS AND REQUIREMENTS.

The vertical distance between the finished basement floor of any dwelling shall not be less than two (2) feet above the ESHGWT. Permission for a vertical distance less

than two (2) feet above the ESHGWT may be granted if the applicant provides sufficient evidence that a proposed lesser vertical distance will not impact the structure being proposed in a manner contrary to the purposes of this Section 4.5, any other structures or constructed facilities, or the functions of the natural groundwater system (such as base flow maintenance) and if all of the following conditions are met:

1. Detailed engineering plans, certified by a Registered Professional Engineer showing a foundation and perimeter drain management system and roof stormwater management system(s) that will mitigate and control groundwater discharge and stormwater runoff, are provided;
2. The provided foundation and perimeter drain discharge management system and roof stormwater management system plans have been reviewed by the Building, Conservation, Health and Engineering Departments and comments adequately addressed;
3. Roof drains and downspouts connect to a stormwater management system designed by a Registered Professional Engineer; and
4. The applicant has agreed to pay the fee for consulting services to perform engineering review pursuant to the provisions of MGL Chapter 44, Section 53G.

Charles Hornig moved that the Planning Board recommend favorable action for Article 9: Amend the Zoning Bylaw – Distance from Basement, Slab or Crawl Space, and Groundwater as presented. Richard Canale seconded the motion. The Planning Board voted in favor of the motion 5-0-0. MOTION PASSED

Robert Creech yes
Robert Peters..... yes
Ginna Johnson..... yes
Richard Canaleyes
Charles Hornig yes

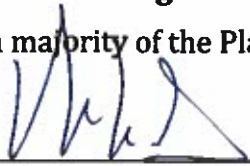
Record of Vote

On May 13, 2020, the Planning Board voted to allow the Planning Board Chair to sign documents on behalf of the Planning Board.

Charles Hornig moved that the Planning Board vote to allow the Chair of the Planning Board to sign all documents for the Planning Board during the COVID-19 State of Emergency. Robert Peters seconded the motion. The Planning Board voted in favor of the motion 5-0-0 (Roll Call: Robert Peters – yes; Charles Hornig – yes; Richard Canale – yes; Ginna Johnson – yes; and Robert Creech – yes). MOTION PASSED

Signature of the Planning Board

Signatures of a majority of the Planning Board,

A handwritten signature in blue ink, appearing to read 'R. Creech', is written over a horizontal line.

Robert Creech, Chair